

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1235
77-1236

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
AgS

UNITED STATES OF AMERICA,

APPELLEE

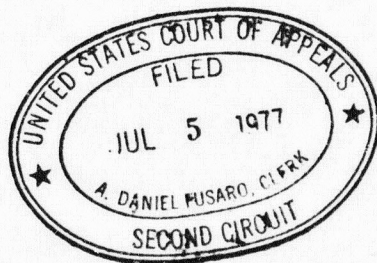
vs.

EDWARD COLLINS
MICHAEL JEAN PETERS,

APPELLANTS

On Appeal from United States District Court
for the District of Vermont

JOINT APPENDIX FOR THE APPELLANTS



E. BRUCE WEBER
WEBER, FISHER, PERRA & GIBSON
139 Main Street
P.O. Box 558
Brattleboro, Vermont 05301
Attorney for Appellant,
Michael Jean Peters

LAWRIN P. CRISPE
114 Main Street
Brattleboro, Vermont 05301
Attorney for Appellant,
Edward Collins

PAGINATION AS IN ORIGINAL COPY

Table of Contents of Appendix

	Page
1. Docket entries, Nos. 76-76-4 76-76-3	1-5A
2. Indictment	1-13
3. Charge	15-49
4 Defendant, Michael J. Peters Request to Charge, 10, 14 & 15	50-51

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

United States	)	
	)	Criminal Action
vs.	)	
	)	No. 76-76-4
Michael Jean Peters	)	No. 76-76-3
Edward Collins et al	)	

<u>INDEX</u>	<u>Document No.</u>
Certified copy of docket entries	A
Indictment (re Fitch, Kotlorowski & Collins).	1
Appearance Bond. (re Collins).	2
Warrant for Arrest of Deft. (re Collins)	3
Appointment of Paul Berch, Esq. (re Collins)	4
Waiver of Deft's Presence. (re Collins)	5
Financial Affidavit. (re Kotlorowski)	6
Appearance Bond. (re Kotlarowski)	7
Deft's Motion for Continuance. (re Collins)	8
Subpoena to Produce Document or Object. (re Collins)	9
Deft. Kotlorowski's Motion for Discovery & Inspection & Memorandum.	10
Deft. Kotlorowski's Motions for list of witnesses & grand jury minutes & Memorandum	11

	<u>Document No.</u>
Superseding Indictment. (re Collins, Kotlarowski & Fitch. Indictment. (re Peters)	12
Gov't's Subpoena to Testify. (re Fitch)	13
Two Subpoenas to Produce Document or Object (Fitch)	14
Financial Affidavit. (re Peters)	15
Appearance Bond. (re Peters)	16
Financial Affidavit. (re Collins)	17
Appointment of Lawrin P. Crispe, Esq., for Deft. Collins	18
Appointment of David A. Gibson, Esq., for Deft. Peters.	19
Gov't's response to Deft's Motion. (Kotlarowski)	20
Gov't's response to Deft. Kotlarowski's Motion for Discovery & Inspection & Memorandum.	21
Deft. Kotlarowski's Motion to Suppress Evidence & Memorandum	22
Deft. Kotlarowski's Motion for enlargement of Time & Affidavit of Norman Cohen, Esq.	23
Financial Affidavit. (re Fitch)	24
Petition to Enter Plea of Guilty & Order Entering Plea. (re Fitch)	25
Appointment of Frederick deG Harlow, Esq. (re Fitch)	26
Summons. (re Peters)	27
Two Gov't's Subpoenas to Produce (re Peters)	28

	<u>Document No.</u>
Ex Parte Motion of Defts. Peters & Collins for Investigative Services	29
Defts. Peters & Collins' Motion for Continuance.	30
Interlocutory Order. (re Peters & Collins)	31
Deft's Request for Findings of Fact. (re Kotlorowski)	32
Gov't's request for findings of fact and conclusions of law. (re Fitch)	33
Gov't's Supplemental Findings of Fact (Kotlorowski)	34
Deft. Kotlorowski's Supplemental Request to Find Supplemental Argument.	35
Findings of Fact & Conclusions of Law. (re Kotlorowski)	36
Deft's Request to Change Plea. (re Kotlorowski)	37
Deft. Kotlorowski's Petition to Enter Plea of Guilty & Order Entering Plea.	38
Subpoena to Testify. (re Collins)	39
Five Subpoenas to Produce Document or Object. (Collins)	40
Deft. Collins' Motion for Continuance.	41
Stipulation. (re Collins) (re Peters)	42
Subpoena to Produce Document or Object. (re Peters)	43
Application for issuance of subpoena. (re Peters)	44

Document No.

Order. (re Peters)	45
Memorandum of Law. (re Collins)	46
Gov't's request to charge & trial memorandum. (re Collins & Peters)	47
Deft. Peters' Request to Charge.	48
Deft. Peters' Application for Issuance of Subpoena. (re Collins)	49
Order. (re Peters) (re Collins)	50
Deft. Collins' Request to Charge.	51
Judgment & Commitment Order. (re Fitch)	52
Three Subpoenas to Testify. (re Collins)	52A
Deft. Peters' Motion for Judgment of Acquittal.	53
Deft. Peters' Memorandum.	54
Deft's Motion for New Trial. (re Peters)	55
Deft. Peters' Memorandum.	56
Deft. Collins' Motion for Judgment of Acquittal.	57
Deft. Collins' Memorandum.	58
Deft. Collins' Motion for New Trial.	59
Deft's Memorandum (re Collins)	60
Deft. Kotlorowski's Notice of Readiness of Pre-Sentence Report.	61
Opposition of U. S. to Defts. Peters and Collins' Motions for Judgment of Acquittal etc.	62

Document No.

Order for Surrender. (re Kotlorowski)	63
Judgment & Commitment Order. (re Kotlorowski)	64
Waiver of Deft's Presence. (re Peters)	65
Waiver of Deft's Presence. (re Collins)	66
Appointment of Norman Cohen, Esq. etc.	67
Notice of Readiness of Pre-sentence Investigation Report. (re Peters)	68
Notice of Readiness of Pre-sentence Investigation Report. (re Collins)	69
Certified copy of Judgment. (re Kotlorowski)	70
Deft. Peters' Financial Affidavit.	71
Deft. Collins' Revised Financial Affidavit. (re Collins)	72
Judgment & Commitment Order. (re Collins)	73
Judgment & Commitment Order. (re Peters)	74
Deft. Peters' Notice of Appeal.	75
Deft. Collins' Notice of Appeal.	76
Exhibit Sheets & Court Exhibit re Collins and Peters.	
Exhibit Sheet & Deft's Exhibit re Kotlorowski.	
Clerk's Certificate.	

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States	)	
	)	Criminal Action
vs.	)	No. 76-76-4
	)	
Michael Jean Peters	)	No. 76-76-3
Edward Collins et al	)	

SUPPLEMENTAL INDEX

Document No.

Scheduling Order.	77
Transcript of trial held Feb. 23, 24, 28 & March 1, 1977.	78
Transcript of hearings held on Motions for Judgment of Acquittal & Motions for New Trial. (3-25-77)	79
Clerk's Certificate.	

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA

Criminal No.

v.

GEORGE FITCH, DAVID KOTLAROWSKI, 18 U.S.C. §§2,2312,
EDWARD COLLINS, MICHAEL JEAN 2313, 371
PETERS

COUNT I

The Grand Jury charges:

Between July 24, 1975 and September 25, 1975,
GEORGE FITCH, EDWARD COLLINS and MICHAEL JEAN PETERS,
the defendants, unlawfully, wilfully and knowingly
did transport in interstate commerce from the
vicinity of Cambridge, Massachusetts, to the vicinity
of Wilmington, District of Vermont, a motor vehicle,
to wit, a 1963 Cadillac with a VIN of 63R101815,
knowing the same to be stolen; in violation of
Section 2312, 2, Title 18, United States Code.

COUNT II

The Grand Jury further charges:

Between May 1, 1975 and October 2, 1975, DAVID KOTLAROWSKI, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from the vicinity of Boston, Massachusetts, to the vicinity of Wilmington, District of Vermont, a motor vehicle, to wit, a 1958 Cadillac with a VIN of 58J108964 knowing the same to be stolen; in violation of Sec. 2312, Title 18, United States Code.

COUNT III

The Grand Jury further charges:

Between July 7, 1975 and October 29, 1975, GEORGE FITCH, and MICHAEL JOHN PETERS, the defendants, unlawfully, wilful and knowingly, did transport in interstate commerce from the vicinity of Boston, Massachusetts, to the vicinity of Wilmington, District of Vermont, a motor vehicle, to wit, a 1967 Austin Healy with a VIN of HBJ8BL40958, knowing the same to be stolen; in violation of Sec. 2312, Sec. 2, Title 18, United States Code.

COUNT IV

The Grand Jury further charges:

Between July 7, 1975 and October 29, 1975, EDWARD F. COLLINS, the defendant, unlawfully, wilfully and knowingly did receive, conceal, store, barter, sell and dispose of a motor vehicle, to wit, a 1967 Austin Healy with VIN of HBJ8BL40958, which was part of and constituted interstate commerce, and he then knew the motor vehicle to have been stolen; in violation of Sec. 2313, Title 18, United States Code.

COUNT V

The Grand Jury further charges:

Between July 29, 1975 and October 1, 1975, GEORGE FITCH, EDWARD COLLINS and MICHAEL JOHN PETERS, the defendants, wilfully and knowingly did transport in interstate commerce from the vicinity of Boston, Massachusetts, to the vicinity of Wilmington, District of Vermont, a motor vehicle, to wit, a 1966 Austin Healy with a VIN of HBJ8L36255, knowing the same to be stolen; in violation of Sec. 2312, 2, Title 18, United States Code.

COUNT VI

The Grand Jury further charges:

From on or about May 1, 1975, and continually thereafter up to and including October 29, 1975, in the District of Vermont and elsewhere, GEORGE FITCH, DAVID KOTLAROWSKI, MICHAEL JOHN PETERS and EDWARD COLLINS, wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons to the grand jury unknown, to commit offenses against the United States, to wit, to violate Sec. 2312, 2313, Title 18, United States Code.

It was part of the conspiracy that defendants would

1. Unlawfully, wilfully and knowingly transport in interstate commerce, motor vehicles, knowing the same to have been stolen, in violation of Sec. 2312, Title 18, United States Code.

2. Unlawfully, wilfully and knowingly did conceal, receive, store, barter, sell and dispose of motor vehicles, which were part of and constituted interstate commerce, and they then knew the motor vehicles to have been stolen, in violation of Sec. 2313, Title 18, United States Code.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed in the District of Vermont and elsewhere;

1. On September 25, 1975, EDWARD F. COLLINS, JR., and GEORGE FITCH, a/k/a Robert Coleman, met together on Cold Brook Road in or near Wilmington, Vermont.

2. On or about August 12, 1975 GEORGE FITCH registered a 1963 Cadillac with the Vermont Department of Motor Vehicles.

3. On or about September 15, 1975 and DAVID KOTLAROWSKI registered a 1958 Cadillac with the Vermont Department of Motor Vehicles.

4. On or about September 15, 1975 EDWARD COLLINS registered a 1967 Austin Healy with the Vermont Department of Motor Vehicles.

(All in violation of 18 U.S.C. Sec. 371)

A TRUE BILL

s/ Maxwell Eaton, Sr.
Foreman

GEORGE W. F. COOK
United States Attorney

By: s/ Jerome J. Niedermeier
JEROME J. NIEDERMEIER
Assistant U.S. Attorney

December 16, 1976

Burlington, Vermont

1 The case comes to the court by way of a present-
2 ment of the Grand Jury in an indictment which charges five
3 counts of violation of the laws against the United States,
4 as to the defendant, COLLINS.

5 The defendant, PETERS is charged in four counts.
6 The defendants have pleaded not guilty to each and all of the
7 charges asserted against them. Later in the course of the
8 instructions I will refer to the specific offenses alleged
9 in each particular count but before proceeding to those charges
10 I want to instruct you concerning the general rules that are
11 to govern your deliberations in the case and the matter of
12 evidence that you may consider and it is your duty as jurors
13 to follow the law as stated in the instructions of the court
14 and to apply the rules of law so given to the facts as you
15 find them from the evidence in the case.

16 You are the sole judges of the facts. You should
17 not single out one instruction alone as stating the law but
18 you should consider the instructions in their entirety.

19 The instructions apply to both the defendant
20 COLLINS and the defendant, PETERS, unless I otherwise indicate.

21 The fact that the defendants have been indicted
22 by a grand jury must, in no way, influence your verdict. AS
23 I indicated at the outset of the trial, the indictment is
24 nothing more than a formal method of accusing a defendant of
25 a crime prior to trial.

26 A grand jury investigation which frames and
27 presents the indictment is necessarily one-sided. The Government

1 presents to the grand jury all of the evidence to support the
2 return of an indictment but at such proceedings the defendant
3 has no opportunity usually, to present any evidence in his
4 behalf. Thus, the indictment is not evidence of any crime
5 against the accused and does not create any presumption or
6 permit any inference of guilt.

7 The law presumes a defendant to be innocent of
8 crime and thus, the defendant although accused, begins the
9 trial with a clean slate with no evidence against him.

10 The law permits nothing but legal evidence pre-
11 sented before the Jury to be considered in support of any
12 charge against the accused.

13 So, the presumption of innocence requires that
14 the defendants be acquitted unless the jury is satisfied,
15 beyond a reasonable doubt, of the defendant's guilt after a
16 careful and impartial consideration of all of the evidence in
17 the case.

18 A reasonable doubt is what it means, what the
19 words infer, It is a doubt based upon reason and common sense.
20 The kind of doubt that would make a reasonable person hesitate
21 to act.

22 Proof beyond a reasonable doubt therefore, must
23 be proof of such a convincing character that you would be
24 willing to rely and act upon it unhesitatingly and the more
25 important matters in your own affairs.

26 While bearing in mind that it is rarely possible
27 to prove anything to an absolute certainty, the jury should

1 remember that a defendant is never to be convicted on mere
2 suspicion or conjecture and the burden is always upon the
3 prosecution to prove guilt beyond a reasonable doubt. Thus
4 the burden never shifts to a defendant for the law never
5 imposes upon a defendant, as one accused of a crime in a
6 criminal case, the burden of calling any witnesses, or produc-
7 ing any evidence.

8 So, if the Jury views the evidence in the case
9 as reasonably permitting either of two conclusions, one of
10 innocence, the other of guilt, the jury should of course,
11 adopt the conclusion of innocence.

12 There are two general types of evidence in this
13 as in most cases, direct evidence and circumstantial evidence.
14 Direct evidence means evidence that directly proves a fact
15 and which in itself, if true, conclusively establishes that
16 fact. Such as the testimony of an eye witness who was present
17 and observed the incident, the conduct that is being related.

18 Circumstantial evidence means evidence that proves
19 a fact from which an inference of the existence of another
20 fact may be drawn. It is not necessary that the facts be
21 proved by direct evidence. They may be proved by circumstan-
22 tial evidence or by a combination of direct and circumstantial
23 evidence.

24 Of course, we all use circumstantial evidence
25 in the conduct of our daily affairs. Perhaps it is a matter
26 of no great importance, or it may be of considerable importance.

27 To give you a simple illustration, the other

1 evening, when our family retired, and there was no snow on
2 a particular portion of our yard where the sun had melted it
3 away. The next morning, there was a lot of new snow on that
4 ground, patch of ground, was covered. Well, none of us saw
5 the snow fall but we assumed from the fact that there was
6 new snow on the ground that snow did fall. And that's a
7 simple and humble illustration of how we do use circumstantial
8 evidence in every day living.

9 The law makes no distinction between the proba-
10 tive value of direct and circumstantial evidence but it
11 simply requires that before convicting any defendant, the
12 jury must be satisfied of the defendant's guilt beyond a
13 reasonable doubt from all the evidence in the case.

14 Now, some of the evidence that's been introduced
15 in this case, a portion of it, has been opinion evidence which
16 was presented by the defendant COLLINS concerning the value
17 of the 1967 Austin Healey motor vehicle. And I refer to the
18 testimony of Charles SLATE who was allowed to give his opinion
19 concerning the value of the 1967 Austin Healey 3000, that's
20 the subject of the charge asserted in Count Three and Count
21 Four of the indictment.

22 Now, the evidence of this particular witness,
23 his opinion, is to be weighed along by you with other evidence.
24 If the facts used by Mr. SLATE are proven and his qualifications
25 are sound and he is honest and impartial, his opinion may be
26 of value. While if his opinion was based on a limited oppor-
27 tunity to make observations, his opinion may be of little

1 worth.

2 In the last analysis the testimony offered by a
3 person who has had experience beyond that of ordinary persons
4 and is allowed to give his opinion in court, is to be weighed
5 by you with all the other testimony in the case and the
6 weight of this opinion evidence is for you and you alone, to
7 decide.

8 Concerning the point that Mr. SLATE discussed
9 and gave an opinion, there is other evidence in the case that
10 bears on the same point. That is, on the question of the
11 value of the 1967 Austin Healey and you may, in determining
12 this point, which is one of the issues in the case,

13 You may also consider the testimony of Mr. and
14 Mrs. TAVARES concerning the purchase price that they paid
15 for the vehicle when they purchased it. The time when the
16 vehicle was stolen, any improvements that they may have made
17 on the vehicle during the time of their ownership and you may
18 also consider the amount that appears in the testimony concern-
19 ing the payment of the loss that was made by the insurance
20 carrier of the particular vehicle.

21 You may also consider the photograph of the
22 vehicle that was received as an exhibit in the case but bear
23 in mind that was a photograph that was taken some time prior
24 to the events which you have under consideration.

25 You as jurors, have the or are the sole judge
26 or judges, of the credibility of the witness and the weight
27 to be given to the testimony of these particular witnesses.

1 You should carefully examine all the testimony
2 given and the circumstances under which each witness has
3 testified in every matter in evidence which tends to show
4 whether that particular witness is worthy of belief.

5 Consider each witness' intelligence, his
6 motive and state of mind, the demeanor and manner on the stand,
7 his candor or lack of candor.

8 Consider the witness' ability to observe the
9 matters concerning which he or she has testified and whether
10 the witness impresses you of having an accurate recollection
11 of these matters that the witness has given in evidence.

12 Consider also any relation that the witness may
13 bear to either side of the case, the manner in which the
14 witness might be affected by the verdict, if any, and the
15 extent to which, if at all, the witness is supported or contra-
16 dicted by other evidence in the case.

17 Inconsistencies or discrepancies in the testimony
18 of a witness or between the testimony of different witnesses
19 may or may not cause the jury to discredit such testimony.

20 Two or more persons witnessing an incident or a
21 transaction may see or hear it differently. An innocent mis-
22 recollection, like failure of recollection, is not an uncommon
23 experience.

24 In weighing the effect of a discrepancy always
25 consider whether it pertains to a matter of importance, or
26 merely to an unimportant detail and whether the discrepancy
27 results from innocent error or intentional falsehood.

1 After making your own judgment, you will give
2 the testimony of each witness such credibility if any, as
3 you may think it deserves.

4 Evidence that is at some other time, a witness
5 other than one of the accused has said or done something or
6 has failed to say or do something which is inconsistent with
7 a witness' testimony at the trial may be considered by the
8 jury for the sole purpose of judging the credibility of the
9 witness. But it is never to be considered as evidence, or
10 proof of the truth of any such statement.

11 Where, however, the witness is a defendant on
12 trial in the case and by such statement or other conduct,
13 the defendant admits some facts against his interests, then
14 such statement or conduct if knowingly made or done, may be
15 considered as evidence of the truth of the fact so admitted
16 as well as for the purpose of judging the credibility of the
17 defendant as a witness.

18 There has been testimony in the case that the
19 Defendant, EDWARD COLLINS made certain statements to law
20 enforcement officers. WILMINGTON Chief of Police PRATT, and
21 the statements in the presence of Trooper GILBERT of the
22 Vermont State Police regarding the offense that is charged here.

23 Under the law it is for you the jury, to determine
24 what or whether such statements were made voluntarily and
25 knowingly by the defendant and a person acts voluntarily when
26 he acts of his own free will and not as a result of any deceit
27 by any other person or as a result of any undue pressure brought

1 to bear upon him.

2 So, evidence relating to any statement or act or
3 omission claimed to have been done by the defendant, COLLINS,
4 outside of court and after the offense alleged in the charges
5 should always be considered with caution and weighed with
6 great care and such evidence should be disregarded entirely
7 unless the evidence in the case convinces the jury beyond a
8 reasonable doubt that the statement, act or omission was
9 knowingly and voluntarily made or done.

10 A statement or act or omission is knowingly made
11 or done, if it is done voluntarily and intentionally and not
12 because of mistake or accident or other innocent reason.

13 In determining whether any statement or act or
14 omission claimed to have been made by a defendant outside of
15 court after the offense had been committed, was knowingly
16 made or done, the jury should consider the age, sex, training
17 education, occupation and physical and mental condition of
18 the defendant to whom the statement or conduct is assigned
19 and his treatment while in custody under interrogation, as
20 shown by the evidence in this case and also other circumstances
21 in the evidence surrounding the making of the statement, in-
22 cluding whether before the statement was made or done, the
23 defendant knew, or had been told and understood that he is
24 not obligated or required to make the statement claimed to
25 have been made by the Government, that any statement, act or
26 omission that he might make could be used against him in court,
27 whether he was advised of the assistance of counsel, that is

1 that he was entitled to the assistance of counsel before
2 making the statement, either oral or in writing, or in which
3 he was further advised that he was without means or money to
4 retain counsel of his own choice an attorney would be appointed
5 to advise and represent him at Government expense.

6 If the evidence in the case does not persuade you
7 beyond a reasonable doubt that the admission claimed to have
8 been made by the Defendant COLLINS was made voluntarily and
9 intentionally, you should disregard it entirely.

10 On the other hand, if the evidence in the case
11 does show beyond a reasonable doubt that any incriminating
12 statement made by the defendant was in fact voluntarily and
13 intentionally made, you may consider it as evidence in the
14 case against the defendant who voluntarily and intentionally
15 made such statement.

16 In this case you have heard the testimony of
17 GEORGE FITCH, a Government witness who, according to the
18 theory of the Government's case, and as plainly appears in
19 the evidence, was an accomplice.

20 The Government must frequently resort to the
21 testimony of an accomplice or an informer who participated in
22 a criminal offense, otherwise, it might be difficult if
23 not impossible, to detect and prosecute wrongdoers.

24 An accomplice is one who unites with another
25 person in the commission of a crime voluntarily and with a
26 common intent.

27 An accomplice does not become incompetent as a

1 ~~witness because of his participation in the crime charged.~~

2 On the contrary, the testimony of an accomplice alone, if
3 believed by the jury, may be of sufficient weight to sustain
4 a verdict of guilty even though it is not corroborated in
5 every detail by, or supported by other evidence.

6 However, the jury should keep in mind that such
7 testimony is always to be received with caution and considered
8 with care and you should never convict the defendant on the
9 unsupported testimony of an alleged accomplice, unless you
10 believe that the unsupported testimony is true and that,
11 beyond a reasonable doubt.

12 Mr. FITCH also stands in the position of an
13 informer who was called by the Government. And in this regard
14 I caution you that the testimony of a person who is in Mr.
15 FITCH's position, who provides evidence against a defendant
16 for purposes of mitigation of his own punishment or for
17 personal advantage or for vindication in any way, must be
18 examined with care, as I have indicated, and with greater
19 care than the testimony of an ordinary witness who is not in
20 that posture.

21 So it is for you the jury to determine whether
22 the informer's testimony has been affected by interest or
23 prejudice against the defendants. And if so, whether or not
24 that colored his testimony, and, this is a matter that you
25 must consider from all of the evidence.

26 Now, the fact that the witness FITCH has been
27 convicted of other crimes in MASSACHUSETTS, as indicated in the

1 record, may be considered by you only for the purpose of
2 determining the credibility of the witness FITCH.

3 The fact of such a conviction does not necessar-
4 ily impair the witness' credibility, it is however, one of
5 the circumstances that you may take into consideration in
6 weighing the testimony of that witness.

7 Bearing on the credibility of Mr. Fitch's testi-
8 mony, the Defendant COLLINS has called a witness, that is
9 Mr. ROCKWELL, a probation officer who had supervision over
10 Mr. FITCH at some time, concerning the reputation of GEORGE
11 FITCH in the BRATTLEBORO community, as to his truthfulness
12 or untruthfulness.

13 Now a witness may also be discredited or impeached
14 by evidence that the general reputation of the witness for
15 truth and veracity is bad in the community where the witness
16 now resides or where he has recently resided.

17 If you believe the witness has been impeached,
18 in this regard and discredited, it is your exclusive province
19 to give the testimony of the witness FITCH, such credibility
20 if any, you think it is entitled to deserve in the light of
21 all the circumstances that have been presented as bearing on
22 that point during the course of the trial.

23 The Defendant COLLINS has elected to testify in
24 his own defense. A defendant who wishes to testify is a
25 competent witness and the defendant's testimony is to be
26 judged in the same way as that of any other witness.

27 Of course, in this regard you may consider the

1 ~~serious interest that the defendant has in the outcome of the~~
2 trial in determining what weight you will attach to his testi-
3 mony.

4 The law permits, although it does not require a
5 defendant to testimony in his own behalf and obviously, a
6 defenda t has a deep personal interest in the result of the
7 prosecution, and as I have indicated, you may take this factor
8 into consideration, in determining what weight you will give
9 to his testimony.

10 I want to point out to you with equal force, that
11 it by no means follows that simply because Mr. COLLINS has a
12 vital interest in the end result that he is not capable of
13 telling a truthful and straight-forward story.

14 It is for you to decide to what extent, if at all,
15 the defendant's interest has affected or colored his testimony.

16 The Defendant, COLLINS, has also presented some
17 evidence regarding his reputation in the town where he was
18 brought up, in BROOKLINE, MASSACHUSETTS, where

19 Where the defendant has offered evidence of the
20 good general reputation for truth and veracity or honesty and
21 integrity as a law-abiding citizen, you may consider such
22 evidence along with the other evidence in the case bearing on
23 the principle question you must decide as to innocence or
24 guilt and evidence of the defendant's reputation inconsistent
25 with those traits of character ordinarily involved in the
26 commission of the crime charged, may give rise to a reasonable
27 doubt, since the jury is entitled to determine whether it's

1 improbable or not that a person of good character in respect
2 to those traits, would commit such crimes.

3 The jury will also bear in mind that the law
4 never imposes upon a defendant in a criminal case, the burden
5 or duty of calling any witness or producing any evidence.
6 And the defendant, MICHAEL PETERS has pleaded not guilty and
7 under our system of law he has no obligation to disprove the
8 charges alleged in the indictment nor to affirmatively prove
9 his innocence. He is not required to produce any witnesses
10 in order to establish his innocence but rather, he has the
11 right to insist that the Government who has accused him, to
12 prove that he is guilty beyond a reasonable doubt and he may
13 choose to rely on the state of the evidence and no lack of
14 testimony on the part of the defendant COLLINS will supply a
15 failure of proof on the part of the Government.

16 In accordance with our system of justice a
17 defendant has a constitutional right not to testify and the
18 jury has the obligation to respect his exercise of that right
19 and to draw no inference of guilty.

20 If a defendant takes advantage of his constitutional
21 privilege not to testify, you are not to consider his failure
22 to do so as the slightest evidence of his guilt or innocence.

23 As I indicated earlier, the grand jury returned
24 an indictment charging various offenses in six numbered counts.
25 Count Two of the indictment does not concern these defendants
26 and so is not involved in this case in any way.

27 Counts One, Three and Five of the indictment, each

1 ~~charge violation of the same federal statute but since each~~
2 alleges the transportation of different motor vehicles, each
3 constitutes a separate and distinct offense.

4 Count One of the indictment charges that between
5 July 24th and September 25th, the defendant COLLINS, PETERS
6 and FITCH, although FITCH is no longer a defendant in the
7 present case, charges that COLLINS and PETERS, along with
8 FITCH, unlawfully, willfully and knowingly transported in
9 interstate commerce from the vicinity of CAMBRIDGE, MASSACHU-
10 ETTS to WILMINGTON, VERMONT, a certain 1963 Cadillac with the
11 identification number 63R101815, knowing the same to have been
12 stolen, in violation of Section 2312, which is the National
13 Motor Vehicle Theft Law or Act, and also in violation of
14 Title 18, Section 2 of the United States Code.

15 I will refer later to the specific charges as to
16 these statutes, and the application of these statutes.

17 Count Three charges in substance, the same
18 offense but with a different vehicle and that as Count Three
19 charges that between July 7, 1975 and October 29, 1975,
20 GEORGE FITCH and MICHAEL JOHN PETERS, the defendants, unlaw-
21 fully and knowingly did transport in interstate commerce from
22 the vicinity of BOSTON to the vicinity of WILMINGTON, VERMONT,
23 a motor vehicle identified as a 1967 Austin Healey with a
24 VIN number that is referred to in the indictment, knowing the
25 same to have been stolen in violation of Sections 2 and 2312
26 of Title 18 of the United States Code.

27 Code Five charges another violation of Section

1 2312 of Title 18 and Section 2 of Title 18 alleging that
2 between July 29, 1975 and October first, 1975, EDWARD COLLINS
3 MICHAEL JOHN PETERS, GEORGE FITCH, willfully and knowingly
4 did transport in interstate commerce from BOSTON, MASSACHUSETTS
5 to the vicinity of WILMINGTON, a motor vehicle identified as
6 a 1966 Austin Healey with vehicle identification number HBJ81
7 36255, knowing the same to have been stolen and in violation
8 of the sections of the federal criminal statutes that I have
9 referred to.

10 The charge in Counts One, Three and Five, relate
11 as I have indicated, to Section 2312 of the United States
12 Code which makes it unlawful for anyone to transport in inter-
13 state commerce, a stolen vehicle and provides that whoever
14 transports in interstate commerce a motor vehicle, knowing
15 the same to have been stolen, shall be guilty of a criminal
16 offense.

17 Title 2, which is also charged in these counts,
18 I mean Section 2 of Title 18, which is also charged in these
19 counts, states that whoever commits an offense against the
20 United States or aids or abets, counsels, commands, induces
21 or procures its commission, is punishable as a principal.

22 Now, we will refer to the substance of the
23 offense, that is charged, namely, the charge of transporting
24 in interstate commerce, a stolen vehicle.

25 Before you can find a defendant guilty of Count
26 One of the indictment, you must be convinced beyond a reason-
27 able doubt that the Government has proved the following elements.

1 That between July 24 and September 25th, the defendant trans-
2 ported a motor vehicle, to wit, a 1963 Cadillac, that the
3 1963 Cadillac was stolen and in this case the Government main-
4 tains it was stolen from Mr. Sidney IVES and the word "stolen"
5 is self-explanatory.

6 As used in the crime of transportation of a
7 stolen vehicle, it means all wrongful and dishonest taking
8 of a motor vehicle with the intent to deprive the owner of
9 his right and benefit of ownership.

10 Thirdly, that the automobile moved in interstate
11 commerce and the term "interstate commerce" means commerce
12 between one state and another.

13 Fourthly, that the defendant knew the automobile
14 to have been stolen and as to this, consider all the evidence
15 and circumstances shown by the evidence, the defendant's
16 conversations with FITCH, their action, conduct and relation
17 to the particular vehicle, their participation, if any, there
18 was, in the theft.

19 Look at all the facts and circumstances shown
20 by the evidence bearing on whether the defendant knew that
21 this particular Cadillac was stolen.

22 Now, knowledge and intent exist in the mind. It's
23 not possible, of course, to look into a man's mind to see
24 what goes on there. The only way you have in arriving at a
25 decision on the question of knowledge and intent is for you
26 to take into consideration all the facts and circumstances
27 shown by the evidence and determine from this proof whether

1 the requisite knowledge and intent were present at the time
2 in question.

3 Direct proof is unnecessary and it is in fact,
4 usually impossible on these particular questions of knowledge
5 and intent. But knowledge and intent may be inferred from all
6 surrounding circumstances.

7 The fifth element of the offense of transporting
8 a stolen vehicle in interstate commerce is that the Government
9 must prove beyond a reasonable doubt that the defendant did
10 participate in the offense, willfully and knowingly.

11 As to this element, the term "unlawfully, willfully
12 and knowingly" means that you must be satisfied beyond a
13 reasonable doubt that the defendant under consideration knew
14 what he was doing, that he did it deliberately and voluntarily
15 as opposed to mistakenly or accidentally, or, as a result of
16 some coercion.

17 Of course, it is not necessary that the defendant
18 knew he was violating any particular law. Rather, it is
19 sufficient if you are convinced beyond a reasonable doubt that
20 he was aware of the general unlawful nature of his act.

21 The elements of the offense as to Count Three,
22 which the Government must prove beyond a reasonable doubt are
23 first, that between July 7th, and October 29, 1975, the defend-
24 ant, did transport a motor vehicle namely, a 1967 Austin
25 Healey. That the 1967 Austin Healey was stolen from Mrs.
26 TAVARES and the word "stolen" has the same meaning I indicated
27 in Count One.

1 Thirdly, that the automobile moved in interstate
2 commerce, and again the term interstate commerce has the same
3 meaning I indicated as to Count One. That is the movement
4 of the car from MASSACHUSETTS to VERMONT.

5 Fourth, that the defendant knew the automobile
6 to have been stolen and I have already advised you concerning
7 knowledge on the part of the defendant as to the fact of
8 theft, the question is, did they participate?

9 Consider what they did and said in relation to
10 the vehicle and all the facts and circumstances that bear on
11 this issue.

12 Lastly, that the action of the defendants were
13 done unlawfully, willfully and knowingly, as I have previously
14 explained these terms to you.

15 Count Five charges that the defendants partici-
16 pated in the transportation of a different Austin Healey,
17 namely a 1966 Austin Healey.

18 So, the burden is on the Government to prove
19 beyond a reasonable doubt that the defendant between the times
20 stated, or within the times stated, transported a motor
21 vehicle, namely, a 1966 Austin Healey, that the Austin Healey
22 was in fact stolen and in this instance from Mr. LESLIE and
23 the word "stolen" has the same meaning as I have already ex-
24 plained to you.

25 Thirdly, that the automobile moved in interstate
26 commerce and that carries the same meaning that I have referred
27 to and that the defendant knew the automobile to have been

1 stolen as I have explained this element to you and lastly,
2 that the acts of the defendant or defendants, were done
3 unlawfully, willfully and knowingly as I have explained those
4 as they relate to Counts One and Two, One and Three.

5 Now, the Government conceded in final argument,
6 that it makes no claim that either of the defendants actually
7 operated any of the vehicles identified in Counts One and
8 Three and Five in their movement from BOSTON, MASSACHUSETTS
9 to a destination in VERMONT.

10 The Government case is to the effect that the
11 Cadillac, the 1967 Austin Healey and the 1966 Austin Healey,
12 were driven by FITCH to VERMONT.

13 To establish the defendants personally operated
14 it is not to establish the crimes charged in these counts,
15 it is not essential that the defendants personally operated
16 the motor vehicles in transit from BOSTON to the vicinity of
17 BRATTLEBORO or WILMINGTON.

18 The Government's claim as to these offenses is
19 that both defendants, COLLINS and PETERS, aided and abetted
20 FITCH in the violation of the federal statutes charged in
21 these counts.

22 As I indicated earlier in explaining Section 2
23 of Title 18, this provision of federal criminal law provides
24 that a person who aids or abets, counsels, commands, induces
25 or procures the commission of an offense against The United
26 States, can be held responsible as a principal.

27 In order to aid and abet another to commit a

1 crime, it's necessary that the accused willfully associate
2 himself in some way with the criminal venture and willfully
3 participated in it as he would in something he wishes to
4 bring about.

5 That is to say, that he willfully by some act
6 or omission, of his, to make the criminal venture succeed.
7 Mere presence of the accused at the scene of the crime, even
8 with knowledge that a criminal venture is under way, standing
9 alone, is insufficient to prove aiding and abetting in the
10 offense.

11 An act or omission is willfully done if it's done
12 voluntarily and intentionally and with the specific intent
13 to do something which the law forbids or with the specific
14 intent to omit to do something which the law requires to be
15 done. That is to say, that an act is done willfully if it's
16 done with a bad purpose, either to disobey or disregard the
17 law.

18 In order to find that either of the defendants,
19 PETERS or COLLINS was an aider or abettor, the Government, in
20 the offenses charged in Counts One, Three and Five, the Govern-
21 ment's proof beyond a reasonable doubt that the accused assoc-
22 iated with the venture, participated in it as something he
23 wished to bring about, or seek by his action to make succeed.

24 And, there must be some basis for inferring that
25 he knew about the enterprise and intended to participate in it
26 to make it succeed and he promoted the venture himself, or
27 had a stake in its outcome.

1 Specific criminal intent is a necessary element
2 for conviction of a crime of aiding and abetting and the
3 prosecution is called upon to establish by the required proof
4 that the defendant knowingly committed the act which the law
5 forbids and that he purposely intended to do so.

6 The Government must prove beyond a reasonable
7 doubt that they knowingly, - that the defendant knowingly
8 acted in the matter and that they knew the car was stolen.

9 Again, I will say that mere presence of a
10 defendant at the scene of the crime is not, even if coupled
11 with knowledge, that the crime is being committed, is not
12 sufficient to prove aiding and abetting or membership in the
13 conspiracy, which I will later refer to you.

14 Now, Count Four of the indictment charges a some
15 what different offense. This charge is asserted against the
16 defendant COLLINS, only and it alleges that between July 7th
17 and October 29th, EDWARD COLLINS unlawfully, willfully and
18 knowingly did receive, conceal, store, barter, sell and dis-
19 pose of a motor vehicle, to wit, the same 1967 Austin Healey
20 referred to in Count Three which was part of and constituted
21 interstate commerce and that he then knew that the motor
22 vehicle that is, the 1967 Austin Healey, to have been stolen.

23 This Count in the indictment is based on Section
24 2313 of the United States Code and this particular section
25 makes it unlawful for anyone to sell or receive a stolen
26 vehicle and provides that whoever receives, conceals, stores,
27 barter, sells, or disposes of any motor vehicle, which

1 constitutes interstate commerce, knowing the same to have
2 been stolen, shall be guilty of a crime against the United
3 States.

4 Before you can find the Defendant COLLINS guilty
5 of Count Four of the indictment, you must be convinced beyond
6 a reasonable doubt that the Government has proven the follow-
7 ing elements: First, that between July 7th and October 29,
8 the defendant COLLINS did receive, conceal, store, barter,
9 sell or dispose of a motor vehicle, namely, this particular
10 Austin Healey, of the year 1967, I think designated as 3000.

11 Second, that the Austin Healey was stolen and
12 the word "stolen" as I have already explained to you in con-
13 nection with the prior counts of the indictment, shall apply
14 in determining whether the vehicle was in fact stolen.

15 Thirdly, that the automobile moved in interstate
16 commerce and again, the term "interstate commerce" means
17 commerce between one state and another.

18 Concerning this element, it's not necessary
19 that the defendant knew that the automobile had moved in inter-
20 state commerce but proved independently of the defendant's
21 knowledge that the motor vehicle did in fact move in interstate
22 commerce, the Government has sustained its burden as to this
23 element of the offense.

24 Fourth, that the defendant knew the motor
25 vehicle to have been stolen and as I have already advised you
26 of the law in this regard, the word "stolen" should be given
27 the meaning that I have referred to in a broad definition which

1 was the purpose of Congress in enacting this particular
2 statute.

3 Fifth, that the actions of the defendants were
4 done intentionally, unlawfully, willfully and knowingly as I
5 have previously explained these terms to you in connection
6 with the prior counts.

7 As I hope I have made clear that one element as
8 to Counts One, Three, Five and Four of the indictment, the
9 Government must prove that the defendant or defendants, knew
10 the cars in question to have been stolen.

11 I instruct you that if you find that the defend-
12 ant, a defendant, transported a car or aided and abetted,
13 counseled or induced or procured the car to be transported
14 from MASSACHUSETTS to VERMONT, you must consider all the sur-
15 rounding circumstances in order to determine whether the
16 defendant knew the car was stolen and if you find that the
17 defendant, as to Count Four, if you find that the defendant
18 COLLINS was in possession of a car recently after it was
19 stolen and that his possession is not explained to your satis-
20 faction, you are permitted from such unexplained possession
21 to find that the defendant knew that the car was stolen.
22 That is, you may find the defendant had a required guilty
23 knowledge regarding the particular vehicle if the, you
24 determine that he did have it in his unexplained possession
25 shortly after the crime was committed.

26 Now, as to this Count, the defendant maintains,
27 the defendant COLLINS, maintains he bought the vehicle in good

1 faith, believing the true owner was PETER GANSET of PORTLAND,
2 MAINE, and that he purchased it without knowledge that the
3 1967 Austin Healey was a stolen car.

4 Again, as to this, you are to consider all the
5 evidence in the case that bears on this question, including
6 the true or actual value of the vehicle on the date COLLINS
7 undertook to purchase it, the price that this defendant paid
8 for this car and all other evidence that relates to the
9 matter, including his registration of the vehicle, the forms
10 that were filled out for purchase and use tax and the matters
11 that occurred generally in the registration of the vehicle
12 with the Vermont Commissioner of Motor Vehicles along with
13 all other evidence in the case.

14 If you find that Defendant COLLINS acted in good
15 faith, believing the vehicle was lawfully acquired, by FITCH,
16 from PETER GANSET, you of course should find the Defendant
17 COLLINS not guilty on this count.

18 Now the last count of the indictment charges the
19 crime of conspiracy and it is alleged that on or about March
20 1, 1975 and continually thereafter, up to and including
21 October 29, 1975, in the District of Vermont and elsewhere,
22 GEORGE FITCH, MICHAEL JEAN PETERS, EDWARD F. COLLINS, willfully,
23 unlawfully, did combine, conspire and confederate and agree
24 together with each other and with other persons to the grand
25 jury then unknown, to commit offenses against the United
26 States in violation of Section 2312 that is, the interstate
27 transportation of a stolen vehicle and Section 2313 which is

1 the receiving of stolen property, of a stolen motor vehicle.

2 This Count further alleges that it was a part
3 of a conspiracy to unlawfully, willfully and knowingly trans-
4 port in interstate commerce, motor vehicles, knowing the same
5 to have been stolen, in violation of Section 2312.

6 Top, it was a part of the conspiracy that the
7 defendants would unlawfully, willfully and knowingly conceal,
8 receive, store, barter, sell and dispose of the motor vehicles
9 which were a part of and constituted interstate commerce and
10 that they knew the motor vehicles to have been stolen.

11 The indictment charges in connection with the
12 allegation of conspiracy, certain overt acts, one of which
13 the Court has ordered stricken, as it has no application in
14 the present posture of the case, but the overt acts which you
15 are to consider that are charged in the indictment are that
16 on September 25, 1975, EDWARD COLLINS, and GEORGE FITCH,
17 also known as ROBERT COLEMAN, met together on Cold Brook
18 Road in or near WILMINGTON, VERMONT.

19 The second overt act which you may consider is
20 that on or about August 12, 1975, GEORGE FITCH registered a
21 1963 Cadillac with the Vermont Department of Motor Vehicles.

22 The third overt act which you may consider is
23 that on or about September 15, EDWARD COLLINS registered a
24 1967 Austin Healey with the Vermont Department of Motor
25 Vehicles.

26 Now Count, the final count which you are to
27 consider, Count SIX of the indictment charges each of the

1 defendants with violating the federal law against criminal
2 conspiracy.

3 Concerted action for criminal purposes often
4 makes the attainment of ends more complex than those which
5 an individual acting alone could accomplish and it was be-
6 cause of this and other reasons that Congress made a conspir-
7 acy or concerted action to violate a federal law, a crime
8 separate, distinct and different from the substantive crime
9 which may be the object of the conspiracy.

10 So it is that Congress provided in Section 371
11 of Title 18 of the United States Code, that if two or more
12 persons conspired to commit any offense against the United
13 States and one or more of such persons does any act to effect
14 the object of a conspiracy, he shall be guilty of the criminal
15 offense.

16 Now, what is a conspiracy? A conspiracy may be
17 defined as a combination of two or more persons who, by
18 concerted action, seeks to accomplish a criminal or unlawful
19 purpose.

20 The gist of the offense is the unlawful combina-
21 tion or agreement to violate the law. Conspiracy has been said
22 to be a partnership in criminal purposes.

23 To constitute a conspiracy it is not necessary
24 that two or more persons should meet together and enter into
25 an explicit or formal agreement, for an unlawful scheme. Nor
26 is it required that they should directly by words, or in
27 writing, state what the unlawful scheme is to be and the details

1 of the plan or means by which the unlawful scheme is to be
2 carried out.

3 Of course, conspirators do not ordinarily put
4 their agreements in writing nor make public their plans.
5 By its nature, a conspiracy is usually secret in its origin
6 and in its execution and the agreement is generally a matter
7 of inference deduced from the acts of the persons accused,
8 done in pursuit of an apparent criminal purpose.

9 It is sufficient if two or more persons in any
10 manner, or through any contrivance, impliedly or tacitly came
11 to a mutual understanding to commit an offense against the
12 United States and that one or more of them, committed an overt
13 act in furtherance of the conspiracy.

14 If two or more persons knowingly work together
15 in any way in furtherance of the unlawful scheme, each partici-
16 pant becomes a member of the conspiracy, although his part
17 therein may be a subordinate one or be executed at a remote
18 distance or at a different time from the other conspirators.

19 All of the conspirators need not have originally
20 conceived the conspiracy, or participated in its conception
21 and it is not important who originated the conspiracy. Those
22 who come in later with knowledge of the same and purposes of
23 the conspiracy, and cooperate in the common effort to attain
24 the unlawful result, becomes party to it.

25 The offense is a crime when the unlawful agree-
26 ment, or combination is made and any single overt act to
27 effect the objects of the conspiracy, if thereafter done by at

1 least one of the conspirators, is attributable to all of the
2 conspirators, for the act of one conspirator done in further-
3 ance of the conspiracy, becomes the act of all.

4 Now, the overact need not be criminal in nature.
5 It may be as innocent in itself as the act of walking across
6 the street. It must, however, be an act which tends to ac-
7 complish the plans or conspiracy and must be done in further-
8 ance of the object or purpose of the conspiracy.

9 A conspiracy is not ended as long as the evidence
10 shows an intention to continue. Each alleged conspirator
11 who is the agent of the other at some time during the life
12 of the conspiracy, remains an agent during all of its exist-
13 ence, except that a conspirator may, has a right to withdraw
14 from the execution of the conspiracy but in order to do so,
15 withdrawal requires affirmative and effective action on his
16 part.

17 I want to caution you that mere association with
18 one or more of the conspirators does not make one a member
19 of the conspiracy, nor is knowledge without participation,
20 sufficient.

21 It is necessary for the defendant to actually
22 participate with knowledge of at least some of the purposes
23 of the conspiracy and with intent to aid the accomplishment
24 of those unlawful ends and that he has some stake in the success
25 of the unlawful enterprise.

26 Whenever it appears beyond a reasonable doubt
27 from the evidence in the case that a conspiracy existed, and

1 that a defendant was one of its members, the statements there-
2 after knowingly made and the acts thereafter knowingly done
3 by any persons likewise found to be members, may be considered
4 by the jury as evidence in the case as to the defendant found
5 to have been a member even though the statements and act may
6 have occurred in his absence and without his knowledge, pro-
7 vided such acts and statements were knowingly made and done
8 during the continuance of such conspiracy in furtherance of
9 some objective or purpose of the conspiracy.

10 Otherwise, any admission or incriminating
11 statements made or act done outside of court by one person,
12 may not be considered as evidence against any person who was
13 not present and did not hear the statement made or see the
14 act done.

15 Therefore, statements of a conspiracy, of a
16 conspirator, which are not in furtherance of the conspiracy
17 may be considered as evidence only against the person making
18 them.

19 With these principles as guides, you must deter-
20 mine whether the Government has proved beyond a reasonable
21 doubt each of the following essential elements as to Count Six:

22 That the conspiracy charged in Count Six existed
23 as between any of the co-conspirators alleged.

24 Secondly that the defendant whose guilt you are
25 considering participated in the conspiracy with knowledge
26 of its objectives.

27 Thirdly, that one of the conspirators not necessarily

1 the defendant whose guilt you are considering, committed one
2 or more of the overt acts charged in Count Six and that such
3 acts were done in furtherance of the conspiracy.

4 As I have indicated as alleged in Count Six of
5 the indictment, the conspiracy commenced on May first, 1975
6 and continued up to and including October 29, 1975.

7 Now, the Government is not required to prove
8 that the conspiracy existed over the whole course of the
9 time which is alleged in the indictment. If you find that
10 within that period all of the elements of the crime have
11 been demonstrated to your satisfaction beyond a reasonable
12 doubt then that crime becomes complete and the fact that the
13 Government did now show it was being carried on as early or
14 as long as the indictment says in itself, is not of any impor-
15 tance as far as the element of the crime is concerned.

16 Now a separate crime or offense is charged
17 against one or more of the defendants in each count of the
18 indictment. Each offense and the evidence pertaining to it
19 should be considered by you separately. The fact that you
20 may find all or both of the accused guilty or not guilty
21 of one offense charged, should not control your verdict as
22 to any other offense charged against any of the defendants
23 and if the Government has established beyond a reasonable
24 doubt each of the essential elements of the offense charged
25 against a particular defendant, either one or both, in the
26 Count which you have under consideration, your verdict will
27 be guilty against that defendant or both defendants on the

1 count as you may so find.

2 If you are not so convinced as to any count,
3 your verdict will be not guilty on the count as to the
4 defendant or defendants, whose guilt is not established with
5 reference to the offense charged in that particular count.

6 It is your duty to give separate personal con-
7 sideration to the case of each defendant. When you do so
8 you should analyze what the evidence in the case shows with
9 respect to that particular accused, leaving out of consider-
10 ation entirely any evidence admitted solely against some
11 other defendant or defendants.

12 Bear in mind that each defendant is entitled
13 to have his case determined from the evidence as to his own
14 acts and statements and conduct and any other evidence in
15 the case which may be applicable to him.

16 And, the defendants are not on trial for any
17 conduct not charged in the indictment and you are only asked
18 to consider the particular acts alleged in this indictment
19 and no other.

20 The Court wants to point out to you that under
21 your oath as jurors you cannot allow any consideration of
22 the punishment which may be inflicted upon any defendant,
23 if convicted, to influence your verdict in any way or in any
24 sense, enter into your deliberations.

25 The duty of imposing sentence rests exclusively
26 with the Court and your function is to weigh the evidence in
27 the case and to determine the guilt or innocence of each

1 defendant solely on the basis of such evidence and the law
2 as applicable to that particular defendant.

3 You are to decide the case upon the evidence
4 and the evidence alone and you must not be influenced by any
5 assumption, conjecture or sympathy or any inference not
6 warranted by the facts until proven to your satisfaction by
7 the required proof.

8 The verdict that you each must represent the
9 considered judgment of each juror. In order to return a
10 verdict, it is necessary to say that each juror agreed to
11 that verdict. So your verdict must be unanimous and it will
12 be announced by your Foreman in open court when called upon
13 by the Court to do so.

14 If it becomes necessary during your deliberations
15 to communicate with the Court, you may send a note by the
16 Bailiff, signed by your Foreman or by one or more of the
17 members of the Jury. Usually it's the Foreman who addresses
18 any communications that the Jury may wish to make with the
19 Court.

20 No member of the Jury should ever attempt to
21 communicate with the Court by any means other than a signed
22 writing and the Court will never communicate with any member
23 of the Jury on any subject touching the merits of the case,
24 other than in writing or orally here in open court.

25 You will note from the oath about to be taken by
26 the Marshal that he too, as well as all other persons, are
27 forbidden to communicate in any way or manner with any member

1 of the Jury on any subject touching the merits of the case
2 and bear in mind that you are never to reveal to any person,
3 not even to the Court how the jury stands numerically or
4 otherwise, on the question of the guilt or innocence of the
5 defendants, COLLINS and PETERS, until you have reached a
6 unanimous verdict.

7 I want to again suggest to you, as I indicated
8 at the outset, that you shouldn't, - that anything the Court
9 has said during the course of the instructions, is not to
10 indicate in the slightest degree how the Court may feel that
11 the case should be decided.

12 It is your sole province to determine the facts
13 in this case and it is your exclusive duty and responsibility.

14 You have been chosen as jurors in the case to
15 try the allegations presented by the indictment against the
16 defendant EDWARD COLLINS and MICHAEL PETERS and the denial
17 made by these defendants in their pleas of not guilty.

18 You are to perform the duty without bias or
19 prejudice to any party or to any person. Both the defendants
20 and the public expect you will carefully and impartially
21 consider all of the evidence in the case, follow the law as
22 stated by the Court and return a just and true verdict, which
23 is the plain requirement of your oath.

24 Mr. Marshall, will you come forward to be sworn?

25 MR. NIEDERMEIER: Your Honor, might we approach
26 the Bench for a moment?

27 THE COURT: Yes, the Court will entertain

United States of America vs.

United States District Court for

MICHAEL J. PETERS

DISTRICT OF VERMONT

DEFENDANT

Cr. 76-76-4
DOCKET NO. >

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
04	27	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Bruce Weber, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a ~~finding~~/verdict of { ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violation of §§2313, 2 and §2312,
§371, Title 18, United States Code.

The Court finds the defendant is 21 years of age but in consideration
of his prior record of criminal experience and other factors, there
are ~~is~~ not reasonable grounds to believe he will derive benefit under the
provision of 18 United States Code §5010 (a) (b) or (c). Accordingly
sentence is imposed as provided in Subsection (d) of this section.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

one (1) year on Counts I, III, V and VI. Sentence imposed on

Counts I, III, V and VI are to run concurrent with one another.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

James S. Holden

Filed April 27, 1977

Lee LaVictoire

Deputy Clerk () CLERK

Date April 27, 1977.

-48- () DEPUTY

73

United States District Court for

United States of America vs.

EDWARD COLLINS

DISTRICT OF VERMONT

DEFENDANT

Cr. DOCKET NO. 76-76-3

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
04	27	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Lawrin P. Crispe, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a ~~guilty~~ verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violations of §§2312, 2, §2313 and §371, Title 18, United States Code.

The Court finds the defendant is 23 years of age and eligible for treatment as a Young Adult Offender but further finds upon consideration of all pertinent factors that he will not benefit from treatment under the Youth Corrections Act. Title 18, United States Code §4216.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

one (1) year on Counts I, IV, V and VI. Sentence imposed on Counts I, IV, V and VI are to run concurrent with one another.

COMMITMENT RECOMMENDATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

James S. Hodges

Filed April 27, 1977

Lee G. LaVictoire

Deputy Clerk

Date April 27, 1977.

-49-

() CLERK

DEFENDANT, MICHAEL J. PETERS REQUEST
TO CHARGE

10. The testimony of George Fitch is to be considered with suspicion and distrust. It should be scrutinized with particular care since as to Michael Peters the testimony of Mr. Fitch is without any material degree of corroboration. U.S. v. Lee 506 F 2d 111 (1974)

14. You are instructed that an accomplice is a person tainted with confessed criminality. He may be influenced in his testimony by the strong hope of favor.

15. George Fitch is named in the indictment as a co-conspirator. He is self-confessed. When he gives evidence against other persons he may be impelled to do so by motives which may preclude his telling the truth. In other words, he may have a reason to lie as to material facts, and it is your duty to give careful consideration to that fact. An accomplice, tainted as he is with a past criminality, is often influenced in his testimony by motives of favor. Therefore, you must look carefully into any secret motives

that might actuate bad minds and victimize
the innocent. You are cautioned to scrutinize
his testimony with great care and caution.
U.S. v. Kimble 197 F2d 316.